

IN RE: PETITION FOR SPECIAL HEARING
BEFORE THE
SE/corner Falt & Wilson Avenues
(6901-03 Falt Avenue)
12th Election District
7th Councilmanic District

* ZONING COMMISSIONER
OF BALTIMORE COUNTY

Case No. 88-478-SPH

Clara Ziemska Potrzuski
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the nonconforming use of the subject property as a tavern, and additionally, approval of off-street parking and access thereto, all as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified and was represented by Counsel, Patrick Cavanaugh, Esquire. Also appearing on behalf of the Petition were Frank S. Lee, Registered Professional Engineer; Regina Krysiak; Irene Zubrowski; Evelyn M. Klippi; Mr. & Mrs. Herman C. Neusel; Marie Fryza; Marie Lewis; and Gertrude Bradley. There were no Protestants.

Testimony indicated that the subject property, zoned D.R. 5.5, is located at the corner of Falt and Wilson Avenues and is currently improved with both a dwelling and a tavern. The Petitioner testified that there were actually three lots that were the subject of this case. At the request of the Zoning Commissioner, Petitioner's Exhibit A was submitted following the hearing which clearly identifies the three lots as Lots 40, 41 and 42. The Petitioner requests the establishment of a nonconforming use for a tavern at 6903 Falt Avenue and for off-street parking for the tavern at the rear of all three lots. The property was purchased by the Petitioner in 1961 and consists of approximately .23 Acres. The evidence clearly establishes that the building at 6903 Falt Avenue has existed in

tavern began as early as 1941. The parking at the rear of both 6901 and 6903 Falt Avenue has taken place since 1941.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether the use is a different use, and therefore, breaks the continued nature of the non-conforming use, or is the same use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See *McKemy v. Baltimore County, Md.*, 39 Md. App. 257, 385 A.2d 96 (1978).

The evidence in this case indicates that the subject property has never been damaged by fire or other means that resulted in the property actually being closed. Most of the witnesses claimed they have lived in the area for more than 40 years and have never known the tavern to be closed except on Sundays, holidays, or during vacations. They also state that the tavern use has not changed its scope, area, or nature.

After due consideration of the testimony and evidence presented, it is clear that the requirements of the B.C.Z.R. have been complied with and as such, the Petition for Special Hearing for approval of a nonconforming use for a tavern upon the subject site should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of June, 1988 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a tavern, and additionally, to approve off-street parking and access there-

its present form, style and use since approximately 1941. There is some evidence that its current use and the exact size, shape and dimensions of the building have not changed since the late 1930s.

The evidence clearly establishes that the one story building at this location has not been expanded, changed, damaged, or in any way altered in a major fashion since at least 1942. That since at least the late 1930s, it has been continuously used as a tavern. There is no indication of any lapse in the use of the subject property as a tavern since before 1945. In addition, there has always been access to the parking area for the tavern from both Falt Avenue and across the rear of the property at 6901 Falt Avenue from Wilson Avenue. The testimony and exhibits presented at the hearing tend to indicate that there once was an old garage located at the rear of 6901 Falt Avenue which was removed in the 1960s to allow better access to the parking area from Wilson Avenue.

The Petitioner is seeking a nonconforming use of the subject property as a tavern and the continuation of the off-street parking area at the rear of both 6901 and 6903 Falt Avenue to support the tavern operation. The Petitioner claims she has a nonconforming use in both instances because the tavern pre-dates the zoning regulations for Baltimore County.

Zoning was officially enacted in Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature

to, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

ORDER RECEIVED FOR FILING
Date 6/20/88
By J. Robert Haines

authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first zoning regulations were adopted and took effect on January 2, 1945. See *Kahl v. Cons. Gas Elec. Light. and Pwr. Co.*, 191 Md. 249, 254, 60 A.2d 754 (1948); *Calhoun v. County Board of Appeals*, 262 Md. 265, 277 A.2d 589 (1971).

Those regulations created seven zones, four being residential, one commercial, and two industrial. See *McKemy v. Baltimore County*, Md., 39 Md. App. 257, 385 A.2d 96 (1978). Those original regulations also provided for nonconforming uses. That statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The subject of a nonconforming use was dealt with in Section 104.1. That Section read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no

nonconforming use of a building, structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was amended to its current form on March 15,

1976. The current regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation created an exception to the general nonconforming rule in cases concerning special exception office buildings. That Section reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The testimony in this case clearly establishes that the Tavern use on the subject property began prior to 1945. In fact the use as a

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 88-478-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a non-conforming use due to the fact that the property has been used as a bar/tavern since prior to 1945 when the Baltimore County Zoning Laws were first adopted.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):
Clara Ziemska Potrzuski
(Type or Print Name)
Signature: *Clara Ziemska Potrzuski*
(Type or Print Name)
Signature: _____
6901/03 Falt Avenue 282-0981
Address Phone No.
Baltimore, Maryland 21224
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted:
Patrick Cavanaugh, Esq.
Name 2 N. Dundalk Avenue 285-0022
Address Phone No.

RECEIVED
DATE 6-15-88
FOR 88-478-SPH
J. Robert Haines
Zoning Commissioner
for Baltimore County

ORDERED By The Zoning Commissioner of Baltimore County, this 20th day of MARCH 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 103, County Office Building in Towson, Baltimore County, on the 8th day of JUNE 1988, at 11 o'clock A.M.
J. Robert Haines
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING - 1/2 HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL OTHER
REVIEWED BY: JRH DATE 6-15-88

FRANK S. LEE

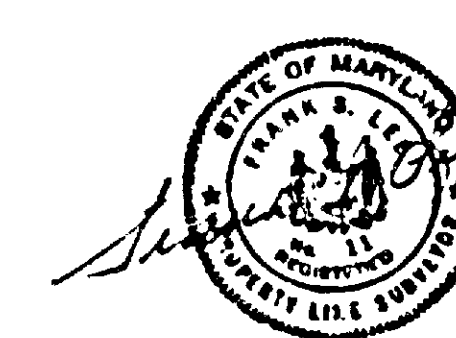
Registered Land Surveyor
1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

February 12, 1988

Nos. 6901 - 03 Falt Avenue
12th District Baltimore County, Maryland

Beginning for the same southeast corner of Falt and Wilson Avenues as laid out and shown on the plat of Harbor View, said plat being recorded among the land records of Baltimore County in Plat book 5 folio 80; thence running and binding on Falt Avenue as follows North 48 degrees 31 minutes 46 seconds East 70.77 feet and North 86 degrees 09 minutes 30 seconds East 54.20 feet, thence leaving Falt Avenue for two lines of division as follows: South 3 degrees 50 minutes 30 seconds East 123 feet and South 86 degrees 09 minutes 30 seconds West 47.20 feet to the northeast side of Wilson Avenue and thence running and binding on the northeast side thereof North 41 degrees 28 minutes 08 seconds West 103.27 feet to the place of beginning.

Being lots 40, 41 and 42 on plat of Harbor View.
Containing 0.23 acres of land more or less.



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
Date: May 16, 1988

FROM: P. David Fields, Director
Office of Planning and Zoning

SUBJECT: Zoning Petitions #88-477-SPH, 88-478-SPH, 88-489-SPH, 88-494-SPH, 88-497-SPH

In view of the subject of these petitions, this office offers no comment.

P. David Fields
P. David Fields, Director
Office of Planning and Zoning

PDF/jat

cc: Shirley Hess, People's Counsel
J. G. Howell
Zoning Office

RECEIVED
MAY 17 1988
ZONING OFFICE

cc: Patrick Cavanaugh, Esq.
5/18/88

CPS-008

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 27, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Patrick Cavanaugh, Esquire
2 North Dundalk Avenue
Baltimore, Maryland 21222

MEMBERS

Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

RE: Item No. 338 - Case No. 88-478-SPH
Petitioner: Clara Ziemski Potrzuski
Petition for Special Hearing

Dear Mr. Cavanaugh:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Enclosures

cc: Frank S. Lee
1277 Neighbors Avenue
Baltimore, Maryland 21237

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

May 6, 1988



Theresa F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347.

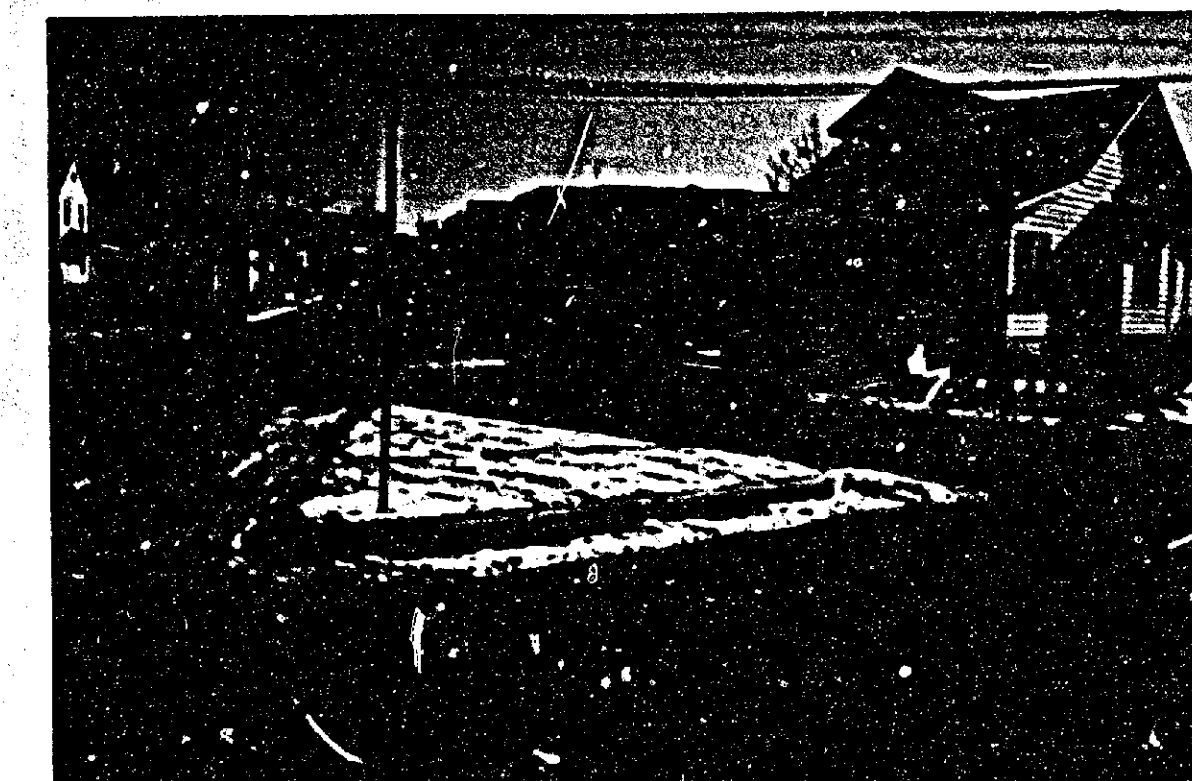
Very truly yours,

Stephen E. Weber
Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEW/RF/pml-b

RECEIVED
MAY 11 1988
ZONING OFFICE

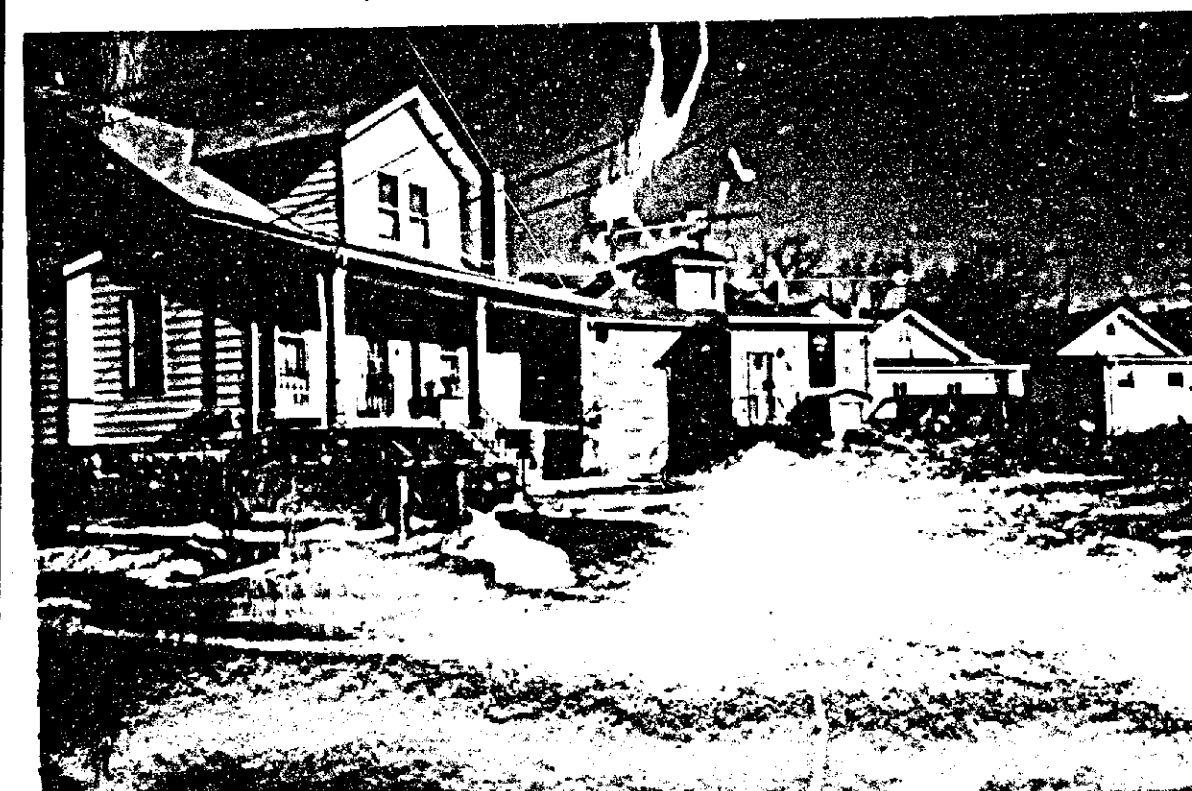
Petitioner's Exhibit (2)



Petitioner Exhibit 2



Petitioner Exhibit 2



Petitioner's Exhibit #2



Petitioner Exhibit #2



PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
REGINA KRYSIAK	RD1 BRIGHT GLEN ROCK RD
TRENE ZUBREWSKI	1301 BELLEHEIM AVE
Evelyn M. Klapp	601 Wilson Ave (284-1031)
Josephine J. M. M. M.	1915 WILSON AVE (284-1243)
Norman C. M. M.	1915 WILSON AVE (284-1243)
MARIE FRYZA	519 S 45TH ST (254-0450)
M. J. J. J.	528 S. 45TH ST. (288-3073)
GERTRUDE E. BRADLEY	6431 DORVILLE AVE 21224 (233-7657)
FRANK S. LEE	1277 NEIGHBORS AVE 21237
CLARA POTRZUSKI	6901 FAIT AVE 21224

